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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

CITY OF CHICAGO,

Petitioner,

v.

MACEO G. WILLIS, JR.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICUS CURIAE* COOK COUNTY, ILLINOIS IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

The citizens of Cook County, Illinois, as *Amicus Curiae* have a critical interest in this Court's review of the decision of the United States Court of Appeals for the Seventh Circuit in the present case. The Office of the State's Attorney of Cook County is charged with prosecuting offenses which arise under the Illinois Criminal Code of 1961. As such it is also the Office's responsibility to assist in the charging of various offenses and to conduct bail hearings and probable cause determinations, without unnecessary delay, before a judge of the circuit court. Bail determinations are to be made at the initial court appearance of the arrestee. 725 ILCS para. 5/109-1. Because an informed bail determination requires knowledge of all relevant factors concerning any particular arrestee, it is the practice of several law enforcement agencies, including the Chicago Police Department, to hold arrestees for a reasonable period of time until those relevant factors have been investigated.

Mindful of this Court's decisions in *Gerstein v. Pugh*, 420 U.S. 103 (1975), and *County of Riverside v. McLaughlin*, 111 S.Ct. 1661 (1991), it is the practice in Cook County to conduct a *Gerstein* hearing at the arrestee's initial court appearance. If probable cause is found to exist, then a bail determination is made by the court. However, it is imperative at that bail determination to apprise the court of the arrestee's background, including whether or not the individual has become a suspect in other criminal cases. Therefore, short delays in presenting an arrestee before a neutral magistrate are not automatically in contravention of the Constitution. Rather, these delays must be related to the State's strong interest in protecting public safety. Since having an informed bail determination is related to protecting public safety, the 45 hour delay in presenting Willis to the circuit court did not result in a violation of his constitutional rights.

The holding of the Court of Appeals, in addition to being contrary to this Court's decisions in *Gerstein, supra*, and *McLaughlin, supra*, would wreak havoc on police departments, prosecutors and the criminal courts themselves. The rigid interpretation given to *Gerstein* and *McLaughlin* by the Court of Appeals leaves no room for flexibility by authorities in determining whether charges should be placed against an arrestee and what amount of bail should be sought if those charges are approved by the court. As will be fully explained in the argument to follow, the reasoning of the Court of Appeals would mean that an individual in Cook County could conceivably spend more time in custody than if the State were allowed a reasonable time to check the arrestee's background and to determine if he is connected to other, similar criminal acts.

Illinois' system conforms to the requirements of *Gerstein* and *McLaughlin*. The reasoning of the Court of Appeals is both at odds with this Court's decisions in those two cases and sets an overly rigid timetable that handcuffs the legitimate State interest of ensuring the public safety. It is therefore essential that this Court grant *certiorari* in this case in order to prevent overburdening law enforcement officials and criminal courts, and to also prevent the application of chaotic and imprecise rulings among the several Circuit Courts of Appeal.

ARGUMENT

REVIEW BY THIS COURT IS ESSENTIAL TO ESTABLISH THAT THE FOURTH AMENDMENT DOES NOT PREVENT THE POLICE FROM POSTPONING AN ARRESTEE'S INITIAL APPEARANCE BEFORE A MAGISTRATE FOR A REASONABLE LENGTH OF TIME, WHICH IS CONSISTENT WITH THE DICTATES OF *GERSTEIN* AND *McLAUGHLIN*, IN ORDER TO GATHER EVIDENCE WHICH IS NOT USED TO ESTABLISH PROBABLE CAUSE FOR THE OFFENSE FOR WHICH THE INDIVIDUAL IS INITIALLY ARRESTED, BUT WHICH IS RELEVANT TO THE CHARGING AND BAIL DETERMINATIONS TO BE MADE AT THAT APPEARANCE.

This Court, in *Gerstein v. Pugh*, 420 U.S. 103 (1975), held that a State must provide "a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Id.* at 125. This Court arrived at its conclusion after balancing the State's need to protect the public with the individual's liberty interests. Noting that undue procedural interference would stymie effective law enforcement, the Court invited the States to experiment in implementing the probable cause determination into their individual pretrial procedures. *Id.* at 124-25.

Expanding on the rule of law pronounced in *Gerstein*, this Court, in *County of Riverside v. McLaughlin*, 111 S.Ct. 1661 (1991), held that "a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*. For this reason, such jurisdictions will be immune from systemic challenges." *Id.* at 1670. In arriving at this conclusion this Court initially noted that three Circuit Courts of Appeals, including the Seventh Circuit, required "a probable cause determination immediately fol-

lowing completion of administrative procedures incident to arrest." *Id.* at 1666. This Court rejected this rigid interpretation of *Gerstein* and instead opted for a more flexible approach in determining what constitutes a prompt hearing. That interpretation of *Gerstein* has obviously been ignored by the Seventh Circuit.

In *McLaughlin*, this Court noted that *Gerstein* attempted to reconcile the important competing interests of allowing the States to protect the public safety by arresting those who are reasonably suspected of committing crime with the harm which necessarily flows to the individual who has been subjected to prolonged detention which is based on mere suspicion. In order to reconcile and balance these interests it was held that a State must ensure that an individual be brought before a neutral magistrate, who will make the probable cause determination, either before or promptly after arrest. *Id.* at 1668, quoting *Gerstein*, at 125. This was a "practical compromise" which recognized the rights of the individual and the practical realities of law enforcement. *McLaughlin*, at 1668.

The *McLaughlin* Court found it significant that *Gerstein* stopped short of saying that jurisdictions were compelled by the Constitution to provide a probable cause determination immediately after taking a suspect into custody. This is so because the proliferation of pretrial hearings would become burdensome and would cause a disservice to all who are involved in the system, including the arrestee. *Id.* at 1668. Thus, the true holding of *Gerstein* was to require the States to provide prompt probable cause determinations which are free of any rigid procedural framework. Instead, the States were invited to experiment with *Gerstein* and to comply with its holding in a way which best fit into their pretrial procedures. *Id.*

In rejecting a rigid application of *Gerstein*, this Court noted that requiring the States to hold a probable cause hearing immediately after a suspect is booked would necessarily be at odds with the Court's call for "flexibility and experimentation by the States." *Id.* at 1668, quoting *Gerstein*, at 123. It was held that:

> Incorporating probable cause determinations 'into the procedures for setting bail or fixing other conditions of pretrial release'—which *Gerstein* explicitly contemplated, *Id.* at 124, 95 S.Ct. at 868—would be impossible. Waiting even a few hours so that a bail hearing or arraignment could take place at the same time as the probable cause determination would amount to a constitutional violation. Clearly, *Gerstein* is not that inflexible.

This Court then rejected the notion that no flexibility was permitted under *Gerstein*. *Id.* at 1669.

Since *Gerstein* permits the States to incorporate probable cause determinations into other pretrial procedures, the *McLaughlin* Court noted that some delays are inevitable. The practical considerations of everyday law enforcement—paperwork, booking procedures, background checks, the drafting of charging documents and bail determinations —are all considerations which must be taken into account in assessing the reasonableness in any delay in having a probable cause determination. *Id.* at 1669. See also, *Sanders v. City of Houston*, 543 F.Supp. 694 (S.D. Tex. 1982), *aff'd Mem.*, 741 F.2d 1379 (5th Cir. 1984). The Court held that 48 hours is not an unreasonable time and such a time period complies with the promptness requirement of *Gerstein*. *Id.* at 1670.

McLaughlin cautioned, however, that a probable cause determination does not pass constitutional muster simply because it is held within 48 hours. Rather, the reasons for the delay must be examined. Unreasonable delays will not be tolerated. Thus, the delay is unreasonable if the police use that time to justify the arrest or the delay is motivated by ill will toward the arrestee or the delay is simply for delay's sake. In determining the reasonableness of the delay "the courts must allow a substantial degree of flexibility." *Id*, at 1670. Thus, the practical realities of everyday law enforcement are critical to any determination of reasonableness.

The Seventh Circuit did not engage in an evaluation of reasonableness. Paying lip service to both *Gerstein* and *McLaughlin* the Court of Appeals applied the rigid test that allows no flexibility under *Gerstein*. As noted previously, such an approach has been explicitly rejected by this Court in *McLaughlin*. The Seventh Circuit simply held that Willis' rights were violated because he was not brought before a magistrate immediately after the booking procedures were completed.

Willis was held for 45 hours before being taken before a court at which time a probable cause hearing and a bail determination were made. Thus, it is clear that his detention falls within the parameters of *McLaughlin*. Moreover, there were reasonable explanations for the delay.

It had been determined that Willis was the offender in a crime, and there is no dispute that probable cause existed to arrest him for that crime. During the course of the booking procedure it was learned that Willis might possibly be involved in similar crimes. The police then investigated those crimes, including conducting a line-up, to determine if Willis was indeed the perpetrator. Thus, the police were conducting an investigation of other crimes in which Willis

may have been involved. They were not conducting an investigation in order to gather evidence to justify the arrest. Rather, such additional information could be used to make an informed charging decision and to provide the court with all relevant information so that an informed bail determination could be made. Therefore, as the delay in bringing Willis to court was not occasioned by the gathering of evidence to justify his arrest it cannot be said that the delay was unreasonable.

Similarly, there is no indication at all that the delay here was motivated by ill will against Willis or simply for the sake of delay.

The delay here was reasonable and was justified by concerns of proper charging and bail determinations. The Seventh Circuit, however, refused to look beyond the fact that Willis was not brought before a court at the earliest possible time and held that the delay violated Willis' constitutional rights. The Seventh Circuit's reasoning is flawed for the reasons stated above as well as for those reasons set forth in the City of Chicago's petition before this Court. Moreover, the rigid approach taken by the Court of Appeals is one which places undue burdens upon law enforcement and the criminal justice system.

If the Seventh Circuit's decision is allowed to stand, police officers will find themselves in a situation where they will not know what to do with an arrested individual. Pursuant to the opinion of the Seventh Circuit Court of Appeals, an individual must be taken before a court for a probable cause determination even if there is evidence which may link him to other crimes. Instead of investigating that other evidence, the police and prosecuting authorities would have to make charging decisions and bail requests based on incomplete information. More importantly, in Illi-

nois and other states, the court itself would be making uninformed bail determinations at that initial court appearance. Also, the police would have to take time out to transport the arrestee to court and, if he did not make bail, transport him back to the station so that the investigation into the other crimes might continue. Thus, valuable time would be wasted and police departments would spend their valuable time transporting prisoners rather than solving crime.

The Seven Circuit's approach also works a disservice to the individual who is detained. If the arrestee is brought before a court and probable cause exists and the defendant posts bail, then the police would have to bring him back in for questioning concerning the other crimes. Under the reasoning of the Seventh Circuit if an individual is connected to six crimes and the investigations into the other crimes must be halted while a probable cause hearing is held and a bail determination is made on the initial charge, the arrestee could be subjected to six days in custody as opposed to the mere 45 hours Willis was held here. On the other hand, if the investigations into the other crimes is allowed to continue for a reasonable amount of time and the matters are cleared up one way or another, then informed charging and bail considerations can be made. Moreover, prompt judicial action would take place after a reasonable delay.

Gerstein and *McLaughlin* mandated the States to hold prompt probable cause determinations. Those cases also called upon the States to experiment with incorporating the probable cause determination into their pretrial procedures. Illinois has done so and provides that probable cause and bail determinations are to be made at the initial court appearance. 725 ILCS para. 5/109-1 (1992). In order to make an informed bail determination the court should have all

the information which is relevant to that determination before it. This can only be done if law enforcement is allowed to investigate other crimes to which the arrestee has been linked. Thus, delays in bringing an arrestee to a probable cause hearing must be allowed if reasonable. The delay here was reasonable and the Seventh Circuit's holding to the contrary must be reversed.

The opinion of the Seventh Circuit is inconsistent with this Courts' holdings in *Gerstein* and *McLaughlin*. The court's opinion also creates a split in the Circuits. (See *Kanekoa v. City and County of Honolulu*, 879 F.2d 607 (9th Cir. 1989), cert. denied, 111 S.Ct. 2055 (1991). Moreover, it is clear that the court's holding unduly interferes with effective law enforcement. For these reasons certiorari must be granted.

CONCLUSION

Amicus Curiae joins with petitioner in this case and also asks that certiorari be granted.

Respectfully submitted,

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